

REMARKS

An excess claim fee payment letter is submitted herewith for one (1) additional total claim.

Claims 1-12 and 14-25 are all the claims presently pending in the application. Claim 25 is added. Claims 1, 12, 14-17, 22, and 24 are independent.

This Amendment adds new claim 25 in accordance with Examiner Fish's very helpful suggestion. Support for new claim 25, may be found in the specification at, for example, page 8, lines 7-14.

Applicant appreciates the courtesies extended to the Applicant's representative during the personal interview on May 3, 2005 by Examiners Fish and Vu. During the personal interview, Applicant's representative explained that none of the applied references teaches or suggests the features of the claimed invention including a digital content reproducing system that includes a reproducing device, and a backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device. This feature is important for increasing the reliability of all aspects of the content production, delivery and presentation and for making it easier to deal with the content without subjecting the content to the risk of degradation and/or damage.

In particular, Applicant's representative explained that the Saito et al. reference appears to disclose sending signals from a main computer 100 to a backup computer 101 and based upon those signals determining the status of the computers 100 and 101. If the signals indicate that the main computer 100 has failed, then the backup computer 101 instructs the main computer 100 to reset, the backup computer then loads the application software and continues processing.

In other words, the Saito et al. reference discloses that the backup computer system only runs the control system, which handles error reporting and the periodic report signal communications, but otherwise remains idle and does not run the application programs for which the backup computer system entire purpose for existing is to provide a backup so that the application programs will be operated despite a failure in the main computer.

In stark contrast, the backup reproducing device in accordance with the present invention, actively processes signals by decoding the signals while the reproducing device periodically sends a first predetermined signal.

During the personal interview Examiners Fish and Vu alleged that the Takamori reference discloses a backup video processor 3 actively processing signals while the main video processor 1 operates.

Applicant's representative explained that contrary to the Examiner's allegations, the Takamori reference merely discloses that "if the main unit fails, the backup unit is started." (Col. 1, lines 51-53, col. 3, lines 60-65, and col. 4, lines 63-68)

In other words, contrary to the Examiners' allegation, the Takamori reference discloses that the backup video processor 3 does not actively process signals while the main video processor operates. Rather, the Takamori reference discloses that the backup video processor 3 "starts" operating and/or "takes over and continues the operation."

Nowhere within the Takamori reference is there any disclosure that the backup video processor is doing anything at all while the main video processor continues to operate.

During the personal interview Examiners Fish and Vu agreed that the Takamori reference does not explicitly disclose that the Takamori reference teaches or suggests this feature, however, the Examiners alleged 1) that since both the main video processor 1 and the

backup video processor 3 receive the same input, and/or 2) that the disclosure in the Takamori reference that “severe trouble such as the stoppage of broadcast signal transmission are avoided through changeover from the failed block to the normal block” (col. 3, line 66 - col. 4, line 2 - despite the fact that avoiding stopping is not the same as avoiding any delay or interruption in the signal) that the backup video processor 3 must “inherently” process the input while the main video processor 1 operates.

In order to rely upon a reference for the purpose of an “inherent” teaching the Examiner may only rely upon such an assertion by providing extrinsic evidence that makes it clear that the missing descriptive matter is necessarily present in the thing described in the reference.

“To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.”
(Emphasis added, M.P.E.P. § 2131.01(III)).

In this particular instance the Examiner has not only failed to provide any extrinsic evidence in support of the Examiner’s allegation, but that any such extrinsic evidence would specifically contradict the teaching by the Takamori reference that the backup video processor 3 only “starts” and/or “takes over operations” when the main video processor fails.

Thus, the Takamori reference discloses that the backup video processor 3 does not have to be operating at all while the main video processor operates.

Therefore, it would not be possible for the Examiner to provide any extrinsic evidence

at all that would illustrate that the backup video processor 3 must “necessarily” operate while the main video processor 1 operates because the Takamori reference itself discloses that the backup video processor 3 simply does not operate at all until a failure occurs in the main video processor 1.

Additionally, Applicant’s representative pointed out that, even assuming arguendo that the Examiner were able to locate and apply a reference that discloses a backup video processor that operates while a main video processor operates, the Examiner would still not have enough to establish a *prima facie* case of obviousness because the Examiner has not applied prior art that teaches or suggests all the claim limitations.

“To establish a prima facie case of obviousness, three basic criteria must be met. . . . Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (M.P.E.P. § 2142).

In this particular instance, the claimed invention includes a digital content reproducing system that includes a reproducing device, and a backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device.

In other words, the claimed invention provides a connection between when the backup reproducing device decodes the signals with the sending of the first predetermined signal by the reproducing device.

In this instance, the backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device.

Therefore, even assuming for the sake of argument, that the Takamori reference taught that the backup video processor 3 processed the input signal while the main video processor 1 processed the input signal, the Takamori reference does not teach or suggest any connection at all between such a simultaneous processing with any other signal at all, let alone a first predetermined signal.

Moreover, the Saito et al. reference teaches away from such a feature and, as such, one of ordinary skill in the art would clearly not have been motivated to combine the references as alleged by the Examiner.

M.P.E.P. § 2145 X. D. 2. states:

"It is improper to combine references where the references teach away from their combination." (Emphasis added).

The entire purpose and object of the invention that is disclosed by the Saito et al. reference is to provide a multi-computer system with a common disk unit where the backup computer takes over when the main computer fails. Since the Saito et al. reference uses a common disk unit, the backup computer and the main computer cannot operate simultaneously. Otherwise, the data stored on the common disk unit would be corrupted. Indeed, the Saito et al. reference specifically teaches that when a check-in signal is not received from the main computer within a specified period of time, then the main computer is determined to have malfunctioned and the data that is read out from the main computer in the main storage unit 111 of the common disk unit 102 is nullified in order to maintain consistency of the data.

Clearly, any operation of the backup computer while the main computer operates would result in inconsistent and corrupted data in the common disk unit and the Saito et al.

reference very clearly teaches away from operating both the backup computer and the main computer together.

In summary, Applicant's representative explained that none of the applied references teaches or suggests the features of the claimed invention including a digital content reproducing system that includes a reproducing device, and a backup reproducing device that decodes signals while the reproducing device periodically sends a first predetermined signal to the backup reproducing device.

Therefore, the Examiner is respectfully requested to withdraw the rejections.

In view of the foregoing amendments and remarks, Applicant respectfully submits that claims 1-12 and 14-25, all the claims presently pending in the Application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the Application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

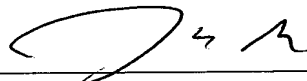
09/824,035
DOCKET NO. WN-2316

18

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: 5/11/05


James E. Howard
Registration No. 39,715

McGinn & Gibb, PLLC
8321 Old Courthouse Rd., Suite 200
Vienna, Virginia 22182
(703) 761-4100
Customer No. 21254